

EXHIBIT A

(IV of V)

Eli Mistovich, Jr.

09/22/2005

137

1 A. I don't think -- I believe Mr. Urban to be
2 an intelligent person with an extensive railroad
3 career. I don't think he really believed such a
4 ridiculous allegation such as --

5 Q. Do you know whether -- excuse me. Do you
6 know whether he believed it or not?

7 A. I don't know for certain.

8 Q. So you don't know what his belief was?

9 A. No.

10 Q. And the only reasons why you think he might
11 not have believed it are because of your long period --
12 long experience working with the railroad company? Is
13 that fair to say?

14 A. Where we both -- where we both worked for
15 extensive periods of time with Amtrak in various
16 capacities on both the commuter rail contract and prior
17 to that on the Intercity contract, he knows of my
18 reputation. I know of his.

19 I don't think an intelligent person, which
20 I believe him to be, would believe something so
21 ridiculous as Alison Leaton looking at a resume and
22 saying that I'm discriminating because I think it's a
23 minority candidate.

24 Q. Any other reason?

Eli Mistovich, Jr.

09/22/2005

138

1 A. No.

2 Q. Turning to Stephen Nevero, name each and
3 every way that you think Mr. Nevero wrongly interfered
4 with your employment relationship with MBCR.

5 A. In the second session, the March 30th
6 session, he -- it was in his office. And he took the
7 lead to introduce the meeting by saying as my immediate
8 supervisor he regretted -- it was his duty to regret to
9 inform me that my employment with MBCR was terminated.

10 And he had two letters in his possession.
11 One was a letter of resignation. One was a letter of
12 termination. And I had a choice of which one to accept.

13 Q. Apart from what happened in that March 30th
14 meeting with Mr. Nevero, is there any other way that you
15 think Mr. Nevero wrongly interfered with your employment
16 relationship with MBCR?

17 A. Yes.

18 Q. Okay. I'm asking for each way.

19 A. As my immediate supervisor, during the
20 transition in the first nine months, basically I, along
21 with others, worked to make Steve look good, to make the
22 thing get off the ground, both during the transition and
23 in the first nine months to the point where I would have
24 expected Steve to go to bat for me and to argue against

Eli Mistovich, Jr.

09/22/2005

139

1 it.

2 I would have expected that from my
3 immediate supervisor who best knew of the work I had
4 performed for MBCR in the first nine months and during
5 the transition period to ensure their success on the
6 commuter rail.

7 Q. Okay. Again, I'm asking you each and every
8 way that you think Mr. Nevero wrongly interfered with
9 your employment relationship.

10 You mentioned his participation in the
11 March 30th meeting, number one. You indicated, number
12 two, the fact that he didn't go to bat for you. Is
13 there any other way that you think Mr. Nevero wrongly
14 interfered with your employment relationship?

15 A. Yes. Relating to both the meetings,
16 Mr. Nevero, you know, again, as my immediate supervisor,
17 I had bailed him out and made him look good on many
18 different aspects of the transition and the first nine
19 months, including the first winter snowstorm.

20 What I would have expected from him would
21 be a common courtesy. He knew -- he had advance
22 knowledge of these two meetings. He had advance
23 knowledge of the content and the gist of what was going
24 to be discussed. I think it would have been reasonable

Eli Mistovich, Jr.

09/22/2005

140

1 and fair for my immediate supervisor to tip me off --
2 give me a little warning or a little -- so I could be
3 prepared, a little information in advance that what the
4 nature of the meetings were.

5 I think that would have been common
6 courtesy from somebody -- from my immediate supervisor.
7 I would have expected a little more.

8 Q. Okay. And, again, I'm just asking you to
9 list every reason that you think Mr. Nevero wrongly
10 interfered with your employment relationship with MBCR.
11 You've mentioned three things. Are there any other ways
12 in which you believe he wrongly interfered -- wrongfully
13 interfered with your employment relationship?

14 A. Well, again, elaborating on the third point
15 --

16 Q. I'm going to go back and elaborate -- I'm
17 going to give you the opportunity to elaborate. I'm
18 just trying to get the list out.

19 A. Okay. All right. Specifically, before the
20 second meeting, he -- it was on that March 30th date.
21 Approximately 11 o'clock in the morning, I'm in my
22 office conducting my normal duties. He popped his head
23 in my door and said, Listen, there's a meeting in my
24 office at 3 o'clock. We'd like you to be there. I'd

Eli Mistovich, Jr.

09/22/2005

141

1 like you to be there.

2 I said, What's the nature of the meeting?
3 He goes, Well, it's among the same three people that you
4 had a meeting with last Friday. And that was it. I
5 mean, I asked for a little more information. Nothing.
6 You know, I think Steve could have been a little more
7 forthcoming, you know.

8 Q. Okay. Any other way in which you think
9 Mr. Nevero wrongfully interfered with your employment
10 relationship with MBCR?

11 A. Again, Mr. Nevero is a long-time railroad
12 employee and has vast experience in all aspects of
13 railroad engineering. While I worked for him directly a
14 short time, we knew of each other. He was the chief
15 engineer in '86 with Gilford when Amtrak came up and
16 assumed the commuter contract.

17 I had met him several times then as part of
18 the transition back then and talked to him and saw him
19 over the years at various times. So we knew of each
20 other's reputation.

21 I would have expected Steve to -- again,
22 not to give credibility to this six-month, basically,
23 temporary contract employee, Ms. Leaton. To give
24 credence to her allegations versus mine, I didn't think

Eli Mistovich, Jr.

09/22/2005

142

1 it was proper.

2 Q. Any other way in which you think Mr. Nevero
3 acted wrongfully in terminating -- in whatever his role
4 was in terminating your employment relationship with
5 MBCR?

6 A. No.

7 Q. Okay. I'm just going to list the five
8 reasons I have written down to make sure that there's
9 nothing else. First, you indicated his participation in
10 the March 30th session. Second, you indicated his
11 failure to go to bat with you. Third, you indicated his
12 failure to give advance notice of the March 26th
13 meeting. Fourth, failure to give you, really, advance
14 notice of what was going to happen at the March 30th
15 meeting. And fourth was his giving credence to Alison
16 Leaton's allegation -- or fifth if I said that wrong.

17 Is that a correct statement of all the
18 reasons why you think Mr. Nevero wrongfully interfered
19 with your employment relationship?

20 A. Yes.

21 Q. Okay. What was it -- and, again, I'm going
22 to go back through each of those to understand what you
23 felt was wrongful. What was wrongful about Mr. Nevero's
24 involvement in the March 30th meeting? What did he do

Eli Mistovich, Jr.

09/22/2005

146

1 could have said, You know, what's going on? There's
2 some allegations being made -- anything so that I could
3 have properly prepared.

4 I was trying to get this information from
5 Ms. Bowden without success. After everything I did for
6 Mr. Nevero in making him look good as the chief engineer
7 during the transition and in the first nine months
8 through the snowstorms, whatever, I don't think it would
9 have been too much to ask for a little consideration.
10 Just give me a few hints of what the subject of the
11 meeting was so I might be able to prepare a little more
12 intelligently than just walking in and being blind-
13 sided.

14 Q. And you also indicated that Mr. Nevero
15 acted wrongfully by believing Alison Leaton's
16 allegations. What was wrongful about Mr. Nevero
17 believing Alison Leaton as opposed to you?

18 A. I think he testified he didn't even know --
19 he barely ever met Alison Leaton. For the chief
20 engineer with over 30 years' railroad experience to take
21 the word of some stranger, some independent contract
22 employee he doesn't even know versus somebody who's
23 worked with him the last nine months every day, through
24 snowstorms, different crises that came up to get this

Eli Mistovich, Jr.

09/22/2005

147

1 thing off the ground, to try and prevent problems during
2 the six-month transition period, to look ahead and try
3 to eliminate problems that would have developed, to try
4 and make sure the place ran smooth, I don't think it was
5 too much to expect for a little -- a little more
6 consideration. I got nothing.

7 Q. Is there any other reason why you think it
8 was wrongful for him to believe Alison Leaton as opposed
9 to you based on -- other than what you've just testified
10 to?

11 A. Yes. Because the premise was so absurd
12 that looking at a resume anybody could tell whether
13 somebody is a minority or not and to base the entire
14 scenario on that one fact is just ridiculous for
15 somebody with 30 plus years' railroad experience.

16 Q. Is there any other reason other than what
17 you've already testified to as to why you think that
18 Mr. Nevero acted wrongfully by believing Alison Leaton
19 instead of you?

20 A. No.

21 Q. When did you first meet Steve Nevero?

22 A. Well, for sure it was December of 1986. I
23 might have met him before that, but I can't remember
24 back that far. I know December '86 Amtrak was assuming

Eli Mistovich, Jr.

09/22/2005

148

1 the commuter rail contract from Gilford. And Steve was
2 the chief engineer of Gilford and so I was up here on a
3 transition team to get around the property.

4 And we went and met at several joint
5 facilities where we were going to identify the
6 maintenance responsibility where we coincided -- Gilford
7 and commuter rail coincided. We were going to go in and
8 delineate the maintenance responsibility.

9 Q. Before you started working at Mass. Bay
10 Commuter Rail, in the period of time before that, how
11 much did your work bring you into contact with Stephen
12 Nevero?

13 A. Very -- very seldom. I mean, occasionally
14 there would be -- but few and far between. Very seldom.

15 Q. And, again, in that period of time before
16 he and you became MBCR employees, did you have any
17 experience or involvement in hiring decisions where
18 Steve Nevero would have been aware of your role?

19 A. No.

20 Q. Did you ever have any relationship with
21 Steve Nevero outside of work?

22 A. No.

23 Q. Turning to the period of time when you
24 became an MBCR employee, Mr. Nevero was your supervisor?

Eli Mistovich, Jr.

09/22/2005

149

1 A. Correct.

2 Q. And did you work with him closely?

3 A. Yes.

4 Q. And did you enjoy a good working
5 relationship with Mr. Nevero?

6 A. I'd say it was decent.

7 Q. Did you have any difficulties with
8 Mr. Nevero before the incident that led to your
9 termination?

10 A. The only difficulty is -- if you would
11 classify it as that, was, as I alluded to earlier, this
12 constant disagreement where I knew we were shorthanded.
13 I demonstrated -- I documented -- I gave him 37 names in
14 that memo that's already an exhibit of how shorthanded
15 -- again, this is during the summer of 03. I knew what
16 was coming. I knew the winter was going to be a
17 disaster because MBCR wasn't hiring anybody.

18 I was so frustrated that I could see what
19 was going to happen, and I tried to implore Steve to
20 convince MBCR to hire, without success. And then the
21 catastrophe hits December 6th and 7th. An employee gets
22 killed in a complete fiasco in a snowstorm. Do you know
23 how frustrating it is to know what's going to happen and
24 you try to take steps to prevent it and the individual

Eli Mistovich, Jr.

09/22/2005

156

1 And I attached to the original -- you don't
2 have it on your copy -- I attached a list of 37 names of
3 people that were now, through attrition, no longer
4 employed through retirement or resignation or whatever.
5 And he had the audacity at that meeting to say, No, I
6 disagree with that. We're not 37 short. We based it on
7 an Amtrak budget, and we're not 37 short. You could
8 only go around and around so much. I mean, it was an
9 absolute lie.

10 Q. Did Mr. Nevero ever do or say anything in
11 your presence that indicated that he wanted your
12 employment with MBCR to end?

13 A. No.

14 Q. Did you ever learn that Mr. Nevero did or
15 said anything outside of your presence that indicated he
16 wanted your employment with MBCR to end?

17 A. No.

18 Q. Are you aware of any reasons that
19 Mr. Nevero may have wanted your employment to end?

20 A. Only one possibility, that if he was
21 instructed -- Mr. Lydon wanted to place his cousin, Bob
22 Johnson, in my job. Perhaps the word came down that I
23 had to vacate the position. Mr. Nevero was loyal.
24 Whatever his boss tells him, he will do.

Eli Mistovich, Jr.

09/22/2005

157

1 Q. Other than that, is there any other reason
2 that you think that Mr. Nevero may have wanted your
3 employment to end?

4 A. No.

5 Q. And your statement about Kevin Lydon maybe
6 wanting to put his cousin in your job, what makes you
7 think that -- do you have any basis to believe that
8 Mr. Lydon communicated that to Mr. Nevero?

9 A. No. I mean, it happened. I mean,
10 Mr. Johnson, shortly after my demise, was hired and
11 filled my position. But I have no -- I cannot prove it
12 yet.

13 Q. Okay. But I'm asking you a different --
14 I'm not asking what you can prove. I'm asking you what
15 you know at this point.

16 Do you have any basis to believe that Kevin
17 Lydon communicated to Stephen Nevero that Kevin Lydon
18 wanted to put his cousin in your position?

19 A. No.

20 Q. Other than your speculation, do you have
21 any reason to believe that Mr. Nevero was motivated by
22 the goal of putting Kevin Lydon's cousin in your
23 position?

24 A. No.

Eli Mistovich, Jr.

09/22/2005

158

1 Q. Other than speculation, do you have any
2 reason to conclude that Kevin Lydon wanted your position
3 to end so he could put his cousin in your job?

4 A. Yes.

5 Q. And what is that?

6 A. The fact that it's just incomprehensible to
7 me that Mr. Lydon, in five seconds, can make a decision
8 to terminate my 28-year railroad career when a few years
9 previously Mr. Lydon had signed an Amtrak evaluation
10 indicating that I exceeded the minority -- the 30
11 percent hiring guideline of 30 percent and was rated way
12 above average for all of my hiring practices,
13 affirmative action, equal employment opportunity, et
14 cetera, females in non-traditional roles, et cetera, et
15 cetera.

16 It's incomprehensible to me that Mr. Lydon,
17 based on my record, which he had knowledge of because he
18 signed one of my evaluations; he was the Amtrak general
19 manager -- incomprehensible to me that a responsible
20 chief executive like that could make a decision in five
21 minutes to terminate a long-time railroad career without
22 some other ulterior motive, incomprehensible.

23 Q. Turning back to Stephen Nevero, do you have
24 any reason to conclude that Mr. Nevero acted improperly

Eli Mistovich, Jr.

09/22/2005

159

1 in looking into the allegations that were brought by
2 Alison Leaton?

3 A. Yes. As I testified earlier --

4 Q. I'm not talking about the manner in which
5 he participated in the investigation. I'm talking about
6 him simply looking into the allegations. Are you saying
7 it was wrong for him even to look into the allegations?

8 A. Yes.

9 Q. And what was wrong about him looking into
10 the allegations?

11 A. As I alluded to earlier, I worked with this
12 men every day for nine months plus the six-month
13 transition period off and on, made him look good, made
14 the transition look good, made him look good, did a lot
15 of work behind the scenes to ensure this thing happened.

16 Contrary to MBCR's belief, they weren't the
17 reason why there was a smooth transition. It was the
18 people in the trenches doing the work. In consideration
19 that -- I thought -- I would have thought that
20 Mr. Nevero or any responsible management person -- how
21 could they give credence to such a ridiculous allegation
22 about one resume and terminate somebody's career on that
23 basis versus the whole body of work? It's just
24 incongruous.

Eli Mistovich, Jr.

09/22/2005

162

1 shape or form was it an impartial investigation. It was
2 an inquisition. It was assumed that what Leaton was
3 saying was correct. And it wasn't any kind of a fair
4 investigation.

5 Q. Okay.

6 MR. TEAGUE: Let's wait a minute. Let me
7 take a minute.

8 MS. RUBIN: Okay.

9 (Recess.)

10 Q. Mr. Mistovich, I'm going to repeat the
11 question. And my question is: Was it wrong for
12 Mr. Nevero simply to look into the allegations? I'm not
13 talking about the manner in which he looked into the
14 allegations. I'm simply talking about whether you think
15 it was wrongful for him to even look into them.

16 A. Yes. It was wrong to investigate something
17 on such a specious charge. It was absolutely
18 ridiculous, I thought.

19 Q. Okay. So you thought he shouldn't even
20 have looked into the allegations?

21 A. Correct.

22 Q. And the reason for that is because of his
23 experience working with you?

24 A. That and based on such a ridiculous charge

Eli Mistovich, Jr.

09/22/2005

163

1 based on such ridiculous allegations from Leaton.

2 Q. Okay. So you thought he shouldn't even
3 have looked into it based on the allegations themselves,
4 which you thought was ridiculous, and based on his
5 knowledge from working with you?

6 A. Yes.

7 Q. Is there any other reason why you think
8 Mr. Nevero shouldn't even have looked into the
9 allegations?

10 A. No.

11 Q. And you indicated that you believe
12 Mr. Nevero concluded that Alison Leaton's accusations
13 were correct. Is that fair to say?

14 A. No.

15 Q. What is wrong with that?

16 A. His testimony the other day where he said
17 he believed I was guilty of what I was charged with
18 contradicted his notes from the original meeting which
19 didn't allude in any way, shape or form to those
20 conclusions. So it would indicate to me that Mr. Nevero
21 was coached or coerced or somehow convinced to change
22 his mind based on his observations and the notes he had
23 from the first meeting.

24 Q. And apart from what you refer to, is there

Eli Mistovich, Jr.

09/22/2005

164

1 any other reason why you think Mr. Nevero didn't believe
2 Alison Leaton's accusations?

3 A. I don't think he believed them because,
4 again, as -- again, it's more contradictory testimony.
5 But it was Mr. Urban testified that Mr. Nevero's take on
6 it was that he felt termination was too severe and
7 recommended a demotion with a restriction from being
8 involved in hiring activities. So there's contradictory
9 testimony.

10 Q. Do you have any information as you sit here
11 today that leads you to believe that Mr. Nevero did not
12 believe you were discriminating?

13 A. Can you repeat that one?

14 Q. Yes. Do you have any reason to believe
15 that Mr. Nevero did not believe you were discriminating
16 against black applicants?

17 A. Yes.

18 Q. And what was that?

19 A. I believe his own notes from that first
20 meeting I don't think indicated any way, shape or form
21 that I was discriminating. I don't think he drew that
22 conclusion. And that's the basis for that.

23 Q. So the basis for your statement that
24 Mr. Nevero did not believe you were discriminating is

Eli Mistovich, Jr.

09/22/2005

165

1 purely based on a review of Mr. Nevero's notes; is that
2 correct?

3 A. No.

4 Q. Okay.

5 A. As I just said, based on the notes and
6 based on Mr. Urban's testimony that his recollection was
7 Mr. Nevero recommended for less than termination, for a
8 demotion and restriction from any hiring activities.

9 Q. Any other reason?

10 A. No.

11 Q. Let's see the exhibits. I'm handing you
12 what has been previously marked Deposition Exhibit 7.
13 Are those the notes that you're referring to when you
14 say those -- what led you to conclude that Mr. Nevero
15 did not believe you were discriminating?

16 A. Yes.

17 Q. If you look at this first bullet point in
18 the note, Mr. Mistovich's initial response to Elizabeth
19 Bowden's questions, Did you say to Alison Leaton that
20 you had trouble with them was, quote, I can show you a
21 box of documents in my office that will show you the
22 problems, end quote. Do you see that?

23 A. Yes.

24 Q. Do you recall Mr. Nevero's testimony that

Eli Mistovich, Jr.

09/22/2005

166

1 he had concluded that you were discriminating as a
2 result of that statement?

3 A. No.

4 Q. You don't recall Mr. Nevero's testimony at
5 his deposition that he concluded that you were
6 discriminating?

7 A. No.

8 Q. And as you look at that statement that's
9 written down there, is there anything in it that
10 suggests to you that Mr. Nevero thought you were not
11 discriminating?

12 A. Indeterminate. You can't tell.

13 Q. You can't tell from that -- you're saying
14 you can't tell from that whether he thought you were
15 discriminating or not?

16 A. Correct.

17 Q. So what makes you say that based on a
18 review of this document you concluded that he determined
19 that you had not discriminated?

20 A. Well, it certainly doesn't conclude that he
21 determined I did discriminate.

22 Q. And that's the sole basis for your
23 statement?

24 A. As I've said, back in Mr. Urban's

Eli Mistovich, Jr.

09/22/2005

173

1 A. No, I don't recall that.

2 Q. Okay. Do you recall me asking you each and
3 every way in which Mr. Nevero wrongfully interfered with
4 your employment relationship with MBCR?

5 A. Yes.

6 Q. And do you recall that one of the reasons
7 that you gave me for him wrongfully interfering with
8 your employment relationship with MBCR was that he chose
9 to credit -- to give credibility to Alison Leaton's
10 allegations rather than to you?

11 A. That's what he testified in his own
12 testimony.

13 Q. I'm asking you what your belief is. I
14 don't care what he testified. I'm asking you what you
15 believe.

16 A. I'm not sure.

17 Q. Okay. So you're not sure if he gave
18 credibility to Alison Leaton's allegations?

19 A. I don't know.

20 Q. And is there something about Mr. Urban's
21 statement that you referred to with Mr. Nevero saying
22 that he was recommending something less than a demotion
23 that makes you think or conclude that Mr. Nevero did not
24 believe you were discriminating?

Eli Mistovich, Jr.

09/22/2005

175

1 couldn't he still have concluded that you were
2 discriminating?

3 A. I don't know. You'd have to ask him.

4 Q. Okay. So I'm just trying to -- you had
5 indicated that because he had been seeking a demotion,
6 that was some evidence you had in your mind that he
7 concluded that you may not have been discriminating.
8 I'm just trying to understand what you meant by that.

9 A. The question is --

10 Q. The question is: What was it about
11 Mr. Urban's relaying of Mr. Nevero's comment about the
12 demotion that makes you think that Mr. Nevero may have
13 concluded that you were not discriminating?

14 A. The fact that he was recommending a lesser
15 punishment.

16 Q. So if he concluded that you were
17 discriminating, you think he would have recommended a
18 termination?

19 A. I don't know.

20 Q. So do you know then whether this statement
21 indicates a belief whether you were discriminating?

22 A. I can't tell for certain.

23 Q. Okay. And do you believe if Mr. Nevero had
24 concluded that you had done nothing wrong that he would

Eli Mistovich, Jr.

09/22/2005

176

1 have recommended a demotion?

2 A. Possibly he would have to salvage --
3 salvage my career. And it's possible he would have done
4 that to save me from the termination.

5 Q. But you're speculating; is that correct?

6 A. Yes.

7 Q. Do you have any reason to conclude that
8 Mr. Nevero's role in your termination was based on
9 anything other than a belief that you were
10 discriminating?

11 A. I can't be sure. I can't be sure based on
12 Steve's entire career. He's sacrificed many people but
13 always kept his job. He's chopped many people in his
14 career because his boss told him to.

15 Q. So are you saying that it's possible that
16 Mr. Nevero may have played a role in your termination
17 because he was told to do so?

18 A. It's possible.

19 Q. Do you have any information one way or the
20 other?

21 A. I can't prove it yet.

22 Q. Again, I'm not asking what you can prove.
23 I'm asking whether you have any information one way or
24 the other.

Eli Mistovich, Jr.

09/22/2005

177

1 A. No.

2 Q. Is there anything that Mr. Nevero did or
3 said that indicated his involvement in this was
4 motivated by anything other than a belief that you were
5 discriminating?

6 A. No.

7 Q. Let's turn to Alison Leaton. Name each and
8 every way you think that Alison Leaton wrongly
9 interfered with your employment relationship with MBCR.

10 A. Well, apparently this termination started
11 with an allegation that Leaton made to Bowden that I was
12 excluding resumes based on where a candidate lived and
13 the thought that I could determine whether they were a
14 minority or not.

15 Q. And when did you come to hear that?

16 A. Well, those were the allegations made at
17 the first meeting. By the time the first meeting
18 concluded, that was made very clear to me that was the
19 gist of the allegation.

20 Q. That was the March 26th meeting you're
21 referring to?

22 A. Correct.

23 Q. And apart from Alison Leaton making
24 comments to Liz Bowden to this effect, is there any

Eli Mistovich, Jr.

09/22/2005

178

1 other way that you think Alison Leaton wrongfully
2 interfered with your employment relationship at MBCR?

3 A. Yes.

4 Q. Okay. I want you to name each reason.

5 A. The original incident that led to this
6 episode, we had three no-shows. We were scheduled for a
7 day of interviews. There were three no-shows.

8 During this time we realized because of the
9 no-shows we'd have to consider additional candidates. I
10 had previously sent Alison Leaton all the resumes I had
11 in my possession which I gathered from employee
12 references. And she now showed me a stack of resumes --
13 I don't know, a dozen, 15, 25, something like that or a
14 stack of resumes -- and said, We'd better start
15 considering these because with these no-shows we are
16 going to need to set up an additional day of
17 interviews.

18 As I was sorting through the pile looking
19 at each one, this one particular resume, as soon as I
20 was putting -- I'd examine them. I'd put them aside.
21 And as soon I put one aside in particular, she yelled
22 across the table, You're excluding that resume because
23 with the name Marvin Morgan and being from Dorchester,
24 you think he's a minority. That's discrimination.

Eli Mistovich, Jr.

09/22/2005

180

1 A. Yes.

2 Q. Again, I'd like you to list all the
3 reasons.

4 A. As I testified earlier, she lied to me.
5 When I inquired about -- after receiving an e-mail from
6 Liz Bowden and attempting to contact her on Thursday,
7 March the 25th without success, a little later that
8 morning, I attempted to contact the only other person
9 who -- the only person who was involved in the hiring
10 process, Alison Leaton.

11 I called her up. She answered. I
12 inquired, What's this about a meeting tomorrow? What
13 can you tell me? What's going on?

14 Q. I just want to interrupt you. You don't
15 have to repeat testimony that you already gave. It will
16 speed things up if you can just refer back.

17 A. Okay. And her reply was, Well, I don't
18 know. You'll have to contact Liz Bowden.

19 Now, that's an outright lie. She did have
20 knowledge. She had, unbeknownst to me, been trading
21 e-mails with Liz Bowden concerning this whole subject.
22 So that was an outright lie. She could have given me a
23 tip, again, to allow me to be prepared.

24 By it's obvious to me it was a set-up.

Eli Mistovich, Jr.

09/22/2005

182

1 and place for their interview.

2 By failing to do that -- as we know, Map
3 Quest, there are many mistakes in their directions, many
4 people -- maybe that's the reason for the three no-shows
5 which led to this whole bizarre series of events that
6 there were -- no wonder there were three no-shows. She
7 was referring to Map Quest, and people were calling and
8 coming late saying they had trouble with Map Quest
9 directions.

10 Why wouldn't Ms. Leaton take the basic
11 courtesy of having a stock set of directions that she
12 could recite to the prospective candidates? That's how
13 every other HR person I've ever dealt with in my 26
14 years' of being involved in hiring did it. Why didn't
15 Ms. Leaton take that simple step? It probably would
16 have avoided this entire fiasco.

17 Q. Is there any other reason other than the
18 reasons you've mentioned that you think Ms. Leaton
19 wrongfully interfered with your employment relationship
20 with MBKR?

21 A. Yes.

22 Q. Okay. List it.

23 A. During this time period, the presidential
24 primary elections were ongoing. In the normal course

Eli Mistovich, Jr.

09/22/2005

183

1 of -- between interviews or business, we ended up
2 discussing, you know, the candidates. And it turned out
3 she was an avid supporter of Howard Dean and later John
4 Kerry. And I was supporting George Bush. And she would
5 carry on about that in an irrational manner to the point
6 where -- at the time I dismissed it. But looking back
7 at the series of events, I have to wonder, Did this play
8 a role? Was she out to get me? She hated Bush and the
9 Republicans that much that -- would she stoop this low
10 to concoct this scheme?

11 Q. Okay. The question I'm asking you isn't --
12 I'm not asking about her motivation. I'm asking about
13 what she did that you thought wrongfully interfered with
14 your employment. I'm going to ask you about her
15 motivation -- what you think about her motivation later
16 on.

17 But in terms of what she did that
18 wrongfully interfered with your employment, that's the
19 only question before you right now. Other than the
20 things you've already testified to, is there anything
21 else that you think she wrongfully did?

22 A. No, not that I can recall right now. There
23 might be one or two, but I can't recall.

24 Q. So the things that I've got listed are her